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Plaintiff in Pro Se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,
PLAINTIFFS.

v.

ROWELL RANCH RODEO, INC., et al.
DEFENDANTS.

Case No. 3:23-cv-01652-VC

**PLAINTIFFS' REPLY TO
DEFENDANTS HARD AND KEVIN
HART'S REPLY TO PLAINTIFFS'
STATEMENT OF UNDISPUTED,
MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' JOINT MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: August 15, 2024
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Courtroom: 5, 17th Floor

Plaintiffs' REPLY to Defendants HARD and Hart's Response to Plaintiffs' Statement of
Undisputed, Material Facts ISO Plaintiffs'
Joint Motion for Partial Summary Judgment (3:23-cv-01652-VC)

1 Plaintiffs submitted a Separate Statement of Undisputed Facts, Dkt. 84-1, to which
 2 Defendants HARD and Hart responded with disputed fact and objections, Dkt. 115-18. Plaintiffs
 3 reply to Defendants' response below.

- 4 1. No dispute.
- 5 2. No dispute.
- 6 3. No dispute.
- 7 4. No dispute. The facts cited are material to Plaintiffs' request for injunctive relief.
- 8 5. Due to an inadvertent staff filing error, Plaintiffs did not file the Declarations of
 9 Robyn Newkirk or Michael Sage when they filed their Motion for Partial Summary Judgment.
 10 However, Plaintiffs filed the declarations on June 28, 2024, immediately upon learning of their
 11 mistake, at Dkts. 113 and 114. Defendants had three days to review the short declarations, the
 12 summaries of which were already included in Plaintiffs' briefing, Dkt. 84. Plaintiffs formally
 13 incorporate the declarations herein as supporting their opposition to Defendants' cross motion for
 14 summary judgment.

15 The evidence produced by Defendants does not dispute the facts alleged in Paragraph 5,
 16 other than the self-serving, post-event declaration of Defendant Kevin Hart. The remaining
 17 evidence presented consisted of video camera footage, which speaks for itself and the "Expert
 18 Report" of James Dudley, Dkt. 115-10 (the "Dudley Report"). Plaintiffs object to Mr. Dudley's
 19 expert report in its entirety because Mr. Dudley did not authenticate the report under oath, and it
 20 is being offered for the truth of the matter asserted therein. It therefore lacks foundation under
 21 FRE 602 and 901 and is hearsay in violation of FRE 803. Mr. Dudley's expert report, moreover,
 22 repeatedly presents legal conclusions as expert opinion. An expert may base an opinion on facts
 23 or data in the case, but he may not testify as to the ultimate **legal** conclusions in the case. FRE
 24 702; *Callahan v. Wilson*, 863 F.3d 144, 153 (2nd. Cir. 2017) ("[E]xpert testimony is not
 25 admissible under Federal Rule of Evidence 702 if it 'usurp[s] . . . the role of the jury in applying
 26 th[e] law to the facts before it,' as such testimony 'undertakes to tell the jury what result to reach,
 27 and thus attempts to substitute the expert's judgment for the jury's.'") (citing *Nimely v. City of*

1 N.Y., 414 F.3d 381, 397 (2d Cir. 2005); *see also Minasian v. Standard Chtd. Bank, P.L.C.*, 109
 2 F.3d 1212, 1216 (1997) (explaining the limitations of FRE 704). No genuine dispute of a
 3 material fact exists.

4 6. No dispute. Defendants fail to submit any citations to evidence that rebuts
 5 Plaintiffs' statement of facts at Paragraph 6. No genuine dispute of a material fact exists.

6 7. The requirement for Defendants' free speech restriction is derived from its lease
 7 agreement with vendors. Dkt. 84-42, p. 209-210. This is material to each of Plaintiffs' free
 8 speech claims. No genuine dispute of a material fact exists.

9 8. The facts contained in Plaintiffs' Paragraph 8 relate to Defendant Rowell Ranch
 10 Rodeo's response to the lease requirement to set up a "marked location for public speech" at the
 11 Rodeo Park. The facts are not compound. No genuine dispute of a material fact exists.

12 9. Plaintiffs cite evidence to support the statements in Paragraph 9. Defendants
 13 dispute Plaintiffs' evidence with the testimony of Defendant Kevin Hart, only, which contradicts
 14 Defendants' prior answers to discovery, as cited by Plaintiffs. No genuine dispute of a material
 15 fact exists.

16 10. No dispute.

17 11. Defendants offer argument in response to Plaintiffs' statement of facts in
 18 Paragraph 11 that contradict their admissions elsewhere. Dkt. 115, p. 1:24-26. No genuine
 19 dispute of a material fact exists.

20 12. No dispute.

21 13. No dispute.

22 14. With respect to the Declarations of Robyn Newkirk and Michael Sage, Plaintiffs
 23 incorporate their response at Paragraph 5 herein. The video evidence Defendants cite to dispute
 24 Plaintiffs' claims speak for themselves. Plaintiffs renew their objection to the Dudley Report.

25 15. No dispute. These facts are relevant to Plaintiffs claims for violation of Civil
 26 Code, Section 51.7, which require proof of intimidation by threat of violence because of political
 27 affiliation, or on account of any characteristic listed or defined in Civil Code, section 51(b) or

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1 (e). No genuine dispute of a material fact exists.

2 16. No dispute.

3 17. No dispute.

4 18. No dispute.

5 19. No dispute.

6 20. Defendants offer the self-serving declaration of Defendant Kevin Hart to dispute
7 Plaintiff's video evidence. Defendants ACSO and Deputy Mayfield do not dispute Plaintiffs'
8 characterization of the instruction Defendants HARD and Hart gave Defendant Mayfield. The
9 video evidence Defendants cite to dispute Plaintiffs' claims speak for themselves. Plaintiffs
10 renew their objection to the Dudley Report. No genuine dispute of a material fact exists.

11 21. No dispute.

12 22. No dispute.

13 23. No dispute.

14 24. No dispute.

15 25. With respect to the Declarations of Robyn Newkirk and Michael Sage, Plaintiffs
16 incorporate their response at Paragraph 5 herein. Defendants offer the self-serving declaration of
17 Defendant Kevin Hart to dispute Plaintiff's video evidence. The video evidence Defendants cite
18 to dispute Plaintiffs' claims speak for themselves. Plaintiffs renew their objection to the Dudley
19 Report. No genuine dispute of a material fact exists.

20 26. With respect to the Declarations of Robyn Newkirk and Michael Sage, Plaintiffs
21 incorporate their response at Paragraph 5 herein. Defendants offer the self-serving declaration of
22 Defendant Kevin Hart to dispute Plaintiff's video evidence. The video evidence Defendants cite
23 to dispute Plaintiffs' claims speak for themselves. Plaintiffs renew their objection to the Dudley
24 Report. No genuine dispute of a material fact exists.

25 27. With respect to the Declarations of Robyn Newkirk and Michael Sage, Plaintiffs
26 incorporate their response at Paragraph 5 herein. Defendants offer the self-serving declaration of
27 Defendant Kevin Hart to dispute Plaintiff's video evidence. The video evidence Defendants cite

1 to dispute Plaintiffs' claims speak for themselves. Plaintiffs renew their objection to the Dudley
2 Report. No genuine dispute of a material fact exists.

3 28. No dispute.

4 29. No dispute. These facts are relevant to Plaintiffs' claims for violations of Section
5 52.1, assault, and battery. These facts are also relevant to Plaintiffs' claims for violation of Civil
6 Code, section 51.7, which require proof of intimidation by threat of violence because of political
7 affiliation, or on account of any characteristic listed or defined in Civil Code, section 51(b) or
8 (e). No genuine dispute of a material fact exists.

9 30. No dispute.

10 31. Defendants offer the self-serving declaration of Defendant Kevin Hart to dispute
11 Plaintiff's video evidence. No genuine dispute of a material fact exists.

12 32. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
13 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
14 Paragraph 32.

15 33. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
16 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
17 Paragraph 33.

18 34. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
19 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
20 Paragraph 34.

21 35. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
22 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
23 Paragraph 35.

24 36. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
25 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
26 Paragraph 36.

27 37. No dispute. Defendants worked in concert, together, to violate Plaintiffs'

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1 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
2 Paragraph 37.

3 38. No dispute. Defendants worked in concert, together, to violate Plaintiffs'
4 constitutional rights. Defendants do not dispute Plaintiffs' statement of facts in any way at
5 Paragraph 38.

6 39. No dispute. Defendants fail to submit any citations to evidence that rebuts
7 Plaintiffs' statement of facts at Paragraph 6. No genuine dispute of a material fact exists.
8

9 Respectfully submitted,

10 DATED: July 29, 2024,

/s/ Jessica L. Blome

Jessica Blome

Lily R. Rivo

GREENFIRE LAW, PC

Attorneys for Plaintiff Deniz Bolbol

13 DATED: July 29, 2024,

/s/ Joseph P. CuvIELLO

JOSEPH P. CUVIELLO

Plaintiff in Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2024, the foregoing was served on all parties through the Court's electronic filing, CM/ECF system in accordance with Rule 5 of the Federal Rules of Civil Procedure.

GREENFIRE LAW, P.C.

By: /s/ Jessica San Luis
Jessica San Luis